SUPREME COURT

FILED

OCT 29 1973

MICHAEL RODAK, JR., CLERK

No. 73-484

In the Supreme Court of the United States

OCTOBER TERM, 1973

W. A. BOYLE, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ROBERT H. BORK,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

In the Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-484

W. A. BOYLE, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner contends that 18 U.S.C. 610, as applied in this case to prohibit the expenditure of a union's general funds as political contributions to candidates in federal elections, violates the First Amendment; that the government should have been required to prove, and the jury to find, that the contributions in question were traceable to the involuntary sources from which the union's general treasury funds were predominantly derived; and that the district court erred in failing to instruct the jury that a union official cannot be convicted under 29 U.S.C. 501(c), prohibiting the transfer of union funds for an illegal purpose, without a finding either that there was no *bona fide* authorization by the union or that the union did not benefit from the transfer. He also argues that the convictions for

both the conspiracy and the substantive offenses violated the double jeopardy clause of the Fifth Amendment and constituted an improper application of the federal conspiracy statute.

After a jury trial in the United States District Court for the District of Columbia, petitioner, the former president of the United Mine Workers of America ("UMW"), was convicted of consenting to contributions of UMW funds to the campaigns of candidates for federal office, in violation of 18 U.S.C. 610 (Counts 2-12); of unlawfully converting union funds, in violation of 29 U.S.C. 501(c) (Count 13); and of conspiring to commit these offenses, in violation of 18 U.S.C. 371 (Count 1).[1]

On the two counts charging conspiracy and unlawful conversion, petitioner was sentenced to concurrent prison terms of five years, pursuant to the parole eligibility provisions of 18 U.S.C. 4208(a)(2); he was placed on probation for two years on the remaining eleven counts, pursuant to 18 U.S.C. 3651, the probationary period to commence after the expiration of the prison sentences. Petitioner was also ordered to pay cumulative fines totaling $130,000 and, as a condition to the partial suspension of sentence, was instructed to make restitution to the UMW treasury in the amount of $49,250. The court of appeals affirmed in a comprehensive opinion (Pet. App. A).

The thrust of the Government's evidence was that Labor's Non-Partisan League (the "League"), the lobbying arm of UMW, made contributions to candidates for federal office and various political commit-

[1] The conspiracy count alleged that there were four co-conspirators, two of whom were also indicted and were later acquitted.

tees. Virtually all of the League funds came directly from the general treasury of the Union. The contributions were directed by petitioner, in his dual capacity as president of UMW and chairman of the League, and carried out by two League members. The opinion of the court of appeals, on which we principally rely, sets forth in detail the facts of this case and, after thorough discussion, properly rejects the arguments which petitioner makes here. We add the following comments.

1. In arguing that 18 U.S.C. 610 violates the First Amendment because it prohibits the direct expenditure of union funds for contributions to candidates in federal elections (Pet. 8-15; see Pet. App. 12a-14a), petitioner relies not on any opinion of this Court, but upon the concurring opinion of Justice Rutledge in *United States* v. *C.I.O.*, 335 U.S. 106, 129, and the dissenting opinion of Justice Douglas in *United States* v. *Automobile Workers*, 352 U.S. 567, 593. The indictment in *C.I.O.* charged that the labor organization expended money for the publication of a weekly periodical, one issue of which urged members to vote for a certain candidate in an upcoming congressional election; the indictment in *Automobile Workers* charged that the union paid for television broadcasts in support of certain candidates for Congress. The minority opinions on which petitioner relies express reservations about the validity of Section 610 only when applied to such use of funds for direct forms of communication. *C.I.O., supra*, 335 U.S. at 130; *Automobile Workers, supra*, 352 U.S. at 598, n. 2. Moreover, by sustaining the indictment in *Automobile Workers*, this Court held that there are at least some situations in which the statute may be validly applied. As we discussed in our brief in *Pipefitters* v. *United States*,

407 U.S. 385 (No. 70-74, pp. 33-34), direct contributions from union general funds to political candidates are at the core of this statute and may be validly proscribed without violation of the First Amendment. Indeed, even the dissenting opinion in *Automobile Workers, supra,* 352 U.S. at 598, n. 2, recognized that contributions and expenditures may stand upon a different constitutional footing from other expressions of political opinion.

2. In regard to petitioner's assertion that the campaign contributions did not necessarily come from an "involuntary" source (Pet. 16-22; see Pet. App. 6a-12a), the court of appeals observed (Pet. App. 10a-11a) that the contributions to the League fund "were alleged to be a series of massive infusions from the UMW's general treasury, not a multitude of contributions from individual members, as in *Pipefitters,*"[2] and that the evidence raised no issue of the " 'voluntariness' of individual members' contributions to the UMW general treasury * * *." The court below thus quite correctly distinguished this case from *Pipefitters.* The court below also emphasized the impropriety of allowing the jury to find, with respect to the UMW's general fund, "that individual members

[2] In 1972, subsequent to the events involved in *Pipefitters, supra,* 18 U.S.C. 610 was amended to exclude expressly from the prohibited contributions or expenditures "the establishment, administration, and solicitation of contributions to a separate segregated fund to be utilized for political purposes by a corporation or labor organization." Pub. L. No. 92-225, Section 205, 86 Stat. 10.

authorized 'voluntary' political contributions of which they knew nothing * * *" (Pet. App. 11a).[3]

Contrary to petitioner's contention (Pet. 18-19, n. 10), the decision below does not conflict with *United States* v. *Warehouse Workers' Union,* 47 LRRM 2005 (E.D. Mo.). There the district court held—in accord with the rationale of the instant decision—that expenditures for political campaigns do not violate Section 610 when, as the record in that case proved, they are made from "funds voluntarily designated for such purpose by all or a part of the individual members of such labor organization," there is a *bona fide* accounting, and the amounts of the contributions do not exceed the voluntary funds. *Id.* at 2006-2007. Nor is petitioner's position supported by *United States* v. *Anchorage Central Labor Council,* 193 F. Supp. 504, 507 (D. Alaska), which involved the expenditure

---

[3] Because a substantial part of the League's money had come from the Union's general treasury, where voluntary and involuntary funds were commingled, the court of appeals regarded it as immaterial that the government could not trace the source of a "small portion" of the League's treasury (Pet. App. 9a, n. 16). Petitioner contends that the unidentifiable portion of the League fund amounted to $60,000, which exceeded the total amount of the alleged contributions by $10,000 (Pet. 5). While the precise amount of this portion is not crucial to this case—as the opinion below makes clear (Pet. App. 9a, n. 16)—in fact only $2,600 (or .2% of the total deposits) could not be definitely identified as either a direct transfer from the Union or earnings on the amount transferred (Tr. 783-787; G. Exs. 3, 4). Petitioner also stated that the Union had over $90,000,000 in funds other than money from dues and assessments. As this Court repeatedly stated in *Pipefitters,* however, the general treasury of the Union is the prohibited source (407 U.S. at 416, 428, 438, n. 47, 439, n. 48); contributions from income made from the investment of dues and other fees are prohibited no less than contributions taken strictly from these mandatory payments. See 407 U.S. at 430.

of funds to pay for political telecasts by an asssociation to which labor unions had made voluntary contributions.[4]

3. In contesting the propriety of his conviction under 29 U.S.C. 501(c) for converting union funds (Pet. 22-25; see Pet. App. 14a-18a), petitioner argues—relying on *United States* v. *Silverman*, 430 F. 2d 106 (C.A. 2), certiorari denied, 402 U.S. 953—that a transfer violates that statute only if there was no subsequent authorization or if the union did not benefit from the transfer. However, as the court below noted (Pet. App. 15a), "[t]he *use* to which the money was converted in that case [*Silverman*], support of a candidate for state office, was not unlawful" (emphasis in original). Since the $5,000 contribution in this case violating Section 501(c) was also proscribed by Section 610, "[n]either authorization by any union officer or body, nor any re-

[4] Petitioner also relies on *United States* v. *Seafarers International Union*, 343 F. Supp. 779 (E.D. N.Y.), as demonstrating the government's obligation under Section 610 to document precisely the sources of a union's general fund (Pet. 18, n. 10). However, the dismissal of the indictment there was based not on the proposition that the government must always meet such a burden, but rather upon the government's failure to respond properly to a court order calling for a further bill of particulars and on the denial of the right to a speedy trial. In the course of the former ruling, the court noted, among other deficiencies in the government's case, that the prosecution had made a series of inconsistent statements during pretrial proceedings—including a representation, later contradicted, that it was not alleging contributions collected from union members or other persons required to pay dues. The court observed (343 F. Supp. at 782-783) that the government had failed to comply with orders to disclose information that it apparently was capable of producing. In the instant case, by contrast, a requirement that the government trace the sources of all Union funds would have been an "insuperable burden" (Pet. App. 9a) and was never ordered or required by the court.

sulting benefit to the union, would have rendered" that transfer lawful (Pet. App. 15a). See *United States* v. *Dibrizzi*, 393 F. 2d 642 (C.A. 2). By causing and consenting to that contribution in violation of Section 610, petitioner was subjecting the Union to a risk of criminal prosecution and a fine of $5,000. Such an act cannot reasonably be considered beneficial to the Union.[5]

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

OCTOBER 1973.

---

[5] Petitioner's claims of double jeopardy and improper application of the conspiracy statute (Pet. 25-28) are thoroughly answered by the opinion below (Pet. App. 18a-23a), upon which we rely.

DOJ-1973-10